

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

LARRY GUDGEL)	
Claimant)	
VS)	
)	Docket No. 253,256
DANISCO INGREDIENTS USA, INC.)	
Respondent)	
)	
and)	
)	
HARTFORD ACCIDENT AND INDEMNITY)	
Insurance Carrier)	

ORDER

Claimant appeals from a preliminary hearing Order entered by Administrative Law Judge Julie A.N. Sample on January 24, 2002.

Issues

The Administrative Law Judge (ALJ) denied claimant's request for medical treatment. The ALJ concluded that claimant had failed to prove "... that the alleged hernia was caused by or had any causal link to his work with respondent." On appeal, claimant contends the evidence establishes that claimant's injury arose out of and in the course of his employment with the respondent. Conversely, respondent argues that the ALJ's Order should be affirmed.

Findings of Fact and Conclusions of Law

After reviewing the record and considering the arguments, the Appeals Board (Board) finds that the Order should be affirmed.

It is undisputed that claimant suffered personal injury by accident arising out of and in the course of his employment on October 5, 1999. On that date, claimant was lifting pallets when he felt pain in his groin area. Medical treatment was authorized by respondent and, on November 5, 1999, surgery was performed by Dr. Craig Anderson for a right inguinal hernia. The repair was performed by laparoscopy as opposed to an open procedure.

Claimant's first post-operative visit with Dr. Anderson was on November 22, 1999. At that time claimant was still having a considerable amount of discomfort. He was instructed to "continue to take it easy" and to return in two weeks for further followup.

Claimant returned to Dr. Anderson on December 6, 1999, "still complaining of some pain in the right inguinal region." Dr. Anderson felt that this pain would go away with time. He instructed claimant to use Ibuprofen for his discomfort and to return "on a p.r.n. basis." No restrictions were placed on him.

Claimant returned to Dr. Anderson for a recheck on December 13, 1999. He reported that he was doing some heavy lifting and straining at work and developed a recurrent right inguinal pain. On examination Dr. Anderson found no evidence of a recurrent hernia and, therefore, suspicioned that claimant "just had a strain." Claimant was provided with light duty restrictions for two weeks and instructed to return after the first of the year.

On December 30, 1999, claimant returned to Dr. Anderson for another post-operative visit. He reported having "little pain now" and working out at home doing sit-ups and push-ups with no discomfort. Dr. Anderson found no evidence of a recurrent hernia and released claimant to return to work on January 3, 2002 with no restrictions. Again, claimant was instructed to return to Dr. Anderson "on a p.r.n. basis."

Claimant returned to Dr. Anderson on January 27, 2000. He reported feeling normal until he was pushing some heavy barrels at work and developed "severe right inguinal pain." On evaluation, Dr. Anderson found the testicles to be normal and no obvious evidence of a right inguinal hernia. He suspicioned that claimant had suffered a muscle strain and recommended "observation, ibuprofen, and conservative treatment at this time." Claimant was asked to return in two weeks if he was still symptomatic.

Claimant last worked for respondent in February 2000. Since then he has worked at various employments including janitorial type work which required quite a bit of lifting.

Claimant did not return to Dr. Anderson again until March 6, 2000. At that time claimant was still having some intermittent pain in the right inguinal region particularly after doing heavy work, but denied any bulge. On examination, Dr. Anderson found no evidence of an inguinal hernia. Dr. Anderson “. . . informed him that I cannot provide him with an explanation at this time as to why he is having prolonged discomfort, but some men will have this and usually with time, it will resolve. I do not feel that he has a nerve entrapment syndrome. I have asked him to be patient and return to see me in one to two months if he is still symptomatic.”

Claimant returned to Dr. Anderson on July 6, 2000 “with a complaint of some blood in his underwear from his penis. . . . he questions whether this could be related to his hernia surgery and I informed him that I feel that this would be highly unlikely.” On examination, Dr. Anderson found, “he has no evidence of a left or right inguinal hernia. His testicles are without masses. He has no lesions on the skin of his penis or on the head of the penis. I have advised a urinalysis with C&S and advise that he be seen by Drs. Myers or Connett so that a cystoscopy can be performed if indicated. Will treat with antibiotics if indications of a urinary tract infection are present.”

Claimant also told Dr. Anderson that he was feeling the same pain as when Dr. Anderson did the surgery to which Dr. Anderson allegedly responded, “well, then we’re going to have to look inside. . . .” But, instead, claimant ended up being released from treatment. Claimant said that there were conflicting statements from what Dr. Anderson said and from what the nurse said afterwards out in the hall. Claimant was not seen again by Dr. Anderson and received no further authorized medical treatment. Although the record is not clear in this regard, it appears that the treatment recommendations by Dr. Anderson were not authorized by the respondent or its insurance carrier.

On May 25, 2001, claimant went on his own to Dr. Thomas Snodell. He was diagnosed as having a hernia. Dr. Snodell referred claimant to a general surgeon. Claimant testified that after he explained to Dr. Snodell about having a hernia repair surgery, Dr. Snodell said, “Well, they either didn’t do it right the first time or that something’s broke loose.” In his October 30, 2001 report, however, Dr. Snodell declined to say whether or not claimant’s current hernia is related to the hernia diagnosed and repaired in 1999. In his report Dr. Snodell said:

I saw the above patient on May 25, 2001. I diagnosed him as having a hernia and referred him to a general surgeon. Hernias are surgical problems. You would need to speak to a surgeon as to whether his current hernia is related to his initial hernia diagnosed and repaired in 1999. A hernia is a surgical illness, and is corrected by surgeons. Because of this, the hernia can be best addressed by a surgeon.
I am sorry I am not of much help.

According to claimant, each time he returned to Dr. Anderson following the surgery, claimant reported having pain and each time Dr. Anderson related the pain to his surgery. Claimant denied having any hernia or groin pain before his October 1999 injury at Danisco. At the time he was terminated by Danisco in February 2000, claimant said he was still having the same or similar pain as what he had before his surgery. The pain was made worse with activity. Claimant testified at the preliminary hearing that he has never stopped having pain whenever he lifts. Claimant did not have any private health insurance coverage and said that he did not have the money to obtain the treatment recommended by Dr. Snodell on his own.

Respondent argues that because claimant did not have a recurrent hernia when he was last examined by Dr. Anderson on July 6, 2000, but then did when he was examined by Dr. Snodell in May 2001, this shows that the condition must have developed during the intervening ten months when claimant was working at other jobs that required heavy lifting. Claimant counters that he has continued to have pain with lifting ever since his surgery and that the pain is the same or similar now to that which he was experiencing before the surgery.

It is significant that claimant never had a palpable hernia at any of the examinations by Dr. Anderson, whereas he did have "fullness in the right inguinal area consistent with a hernia" when examined by Dr. Snodell on May 25, 2001. Although claimant relates a different opinion was offered by Dr. Snodell during his examination, nevertheless, it is also significant that Dr. Snodell was unwilling to state an opinion in writing concerning causation or their being any relationship between claimant's current hernia and the initial hernia and surgery in 1999.

Dr. Snodell specifically deferred to a surgeon on causation. Dr. Anderson is a surgeon and in his opinion, claimant did not have a recurrent hernia and was at maximum medical improvement when he was last seen in July 2000.

The Board finds that claimant has failed to prove that a direct causal connection exists between his current condition and his work activities with respondent and/or the November 5, 1999 surgery.

WHEREFORE, it is the finding, decision and order of the Appeals Board that the Preliminary Hearing Order entered by Administrative Law Judge Julie A.N. Sample on January 24, 2002, should be and is hereby affirmed.

IT IS SO ORDERED.

Dated this _____ day of May 2002

BOARD MEMBER

c: Spencer C. Shields, Attorney for Claimant
 Heather Nye, Attorney for Respondent and Insurance Company
 Julie A. N. Sample, Administrative Law Judge
 Philip S. Harness, Workers Compensation Director